

Navigating Employment-Based Immigration Issues: Solutions and Compliance Tips for Employers in 2023

Presented by:

Brandon Davis

brandon.davis@phelps.com

504.584.9312

Five Important Employment-Based Immigration Trends

- FY2024 H-1B Cap Season.
- Employment authorization for F-1 students experiencing severe economic hardship due to emergent circumstances (also known as special student relief (SSR)).
- Title 42 arguments advance in *Arizona v. Mayorkas* on March 1, 2023.
- I-9 Compliance Obligations.
-

Basic Immigration Terms

Basic Terms

- **Visa** – An official stamp in the foreign national's passport that permits him to board a plane to travel to the United States. The visa serves merely as an application for admission into the U.S., it does not guarantee entry. This stamp is normally issued by a U.S. Consulate or Embassy. There are many different types of visas that permit foreign nationals to engage in different activities in the United States. The most common types of visas are listed below.
- **Immigration Inspection** – The Officer at the point of entry who determines whether or not a foreign national should be admitted on his or her visa. For example: A foreign national enters the United States with a visitor's visa. Immigration computer records show that the foreign national has spent approximately 20 months in the United States cumulatively over the past two years. The Immigration Inspector can advise the foreign national that despite his having a valid visa, he is not admissible to the United States as his extensive visits here indicate that he is no longer really a visitor, but an intending immigrant. The Officer can cancel the foreign national's visa, deny him admission to the United States, put him back on the plane and bar him from readmission to the United States for a five year period.

Basic Terms *cont.*

- **Lawful Permanent Resident** – This is a status often referred to as “having a green card.” This is a status that allows one to reside in the United States permanently and accumulate time towards U.S. citizenship. The word “Immigrant” is often used interchangeably with “Lawful Permanent Resident.”
- **Labor Certification** – The process whereby a foreign national obtains Lawful Permanent Residence through a job offer.
- **Immigrant Visa Proceeding** – The process whereby a foreign national is scheduled for his interview on his application for permanent residence at a U.S. Consulate or Embassy abroad.
- **Adjustment** – The process whereby a foreign national is processed on his application for permanent residence at an office of the CIS.

Basic Terms *cont.*

- **Change of Status** – A foreign national's application to INS to change status from one type of temporary status to another while the foreign national is present in the U.S. If the foreign national departs the U.S., he will be required to secure the correct visa abroad before being readmitted to the U.S.

VISA CLASSIFICATION

- **B Visa** – Visitors for business or visitor for pleasure
 - **B-1** is a visitor for business. A visitor for business is only permitted to conduct limited types of business in the U.S. An attorney must be consulted if an employer has doubts as to the business activities a foreign national admitted on a B-1 visa is permitted to conduct.
 - **B-2** is a visitor for pleasure. A visitor for pleasure is normally admitted to the U.S. for a six month period of time, although it is presumed that he will not spend that entire period of time in the U.S. A visitor for pleasure cannot be employed in the U.S.

Basic Terms *cont.*

- **Treaty Trader or Treaty Investor Visas**
 - **E-1:** Treaty Trader Visa – There must be a treaty of trade between the foreign national's country of citizenship and the U.S. The foreign national must demonstrate that he owns, or he is employed by a company that is 50% or more owned by nationals of the qualifying country and that there is substantial course of trade between the foreign company and the U.S.
 - **E-2:** Treaty Investor Visa – There must be a treaty of investment between the foreign national's country of citizenship and the U.S. The foreign national must demonstrate that he is committed to investing or has invested substantial funds in an active commercial enterprise that is 50% or more owned by nationals of the qualifying country.

Basic Terms *cont.*

- **Student Visa**

- The **F visa** is the student visa.

- **Foreign Exchange Visitor**

- The **J visa** is the foreign exchange visa.
- The INS does not pre-approve this visa. Rather certain entities, including universities, are authorized by the United States Information Agency to approve foreign nationals for this visa. The entities issue a form which must be presented to the CIS or Consulate abroad to obtain a J visa.

Basic Terms *cont.*

- **Professional Workers Visa**

- The **H-1B visa** is issued to a professional worker (work requiring a minimum of a bachelor's degree of the equivalence obtained through education and experience).
- There is currently a numerical quota of 65,000 for these visas.
- A foreign national can have his status changed to H-1B in the U.S., or can obtain the visa at the U.S. Consulate or Embassy abroad.
- The H-1B visa provides for "dual intent." Thus, a foreign national who intends to immigrate to the U.S. can be issued this visa.

Basic Terms *cont.*

- **Intra-Company Transferee Visa**
 - **L-1A** is the visa issued to executives or managers of multinational companies.
 - **L-1B** is the visa issued to international personnel with specialized knowledge.
 - These visas are issued to foreign nationals who meet the following requirements: 1) within the past three years have been continuously employed for at least one year; 2) by an overseas company with a common ownership to the U.S. company; 3) in a managerial or executive position, or in a position of specialized knowledge; and 4) who will be transferred to the U.S. company to serve in a similar capacity.

Basic Terms *cont.*

- **Extraordinary Ability Visa**

- The **O visa** is for a foreign national who has extraordinary ability in the sciences, arts, education, business or athletics, which has been demonstrated by sustained national or international acclaim.

- **Religious Worker Visa**

- The **R visa** is for foreign nationals who: 1) for the two years immediately preceding the time of application for admission; 2) have been a member of religious denomination having a bona fide nonprofit, religious organization in the United States; 3) who seek to enter the United States to perform certain types of religious work for up to five years.

Mastering the Employment Eligibility Verification Process and Understanding Form I-9

Form I-9 Employment Eligibility



To comply with the employment eligibility verification provisions of the INA an employer must:

- Verify the identity and employment authorization documents of employees hired after November 6, 1986
- Complete and retain a **Form I-9** for each employee hired after November 6, 1986
- Refrain from discriminating against individuals on the basis of actual or perceived national origin, citizenship or immigration status

Completing Form I-9

Form I-9: Section 1

▶START HERE. Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which documents they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (If any)	
Address (Street Number and Name)		Apt. Number	City or Town		State	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Email Address		Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee:	Date (mm/dd/yyyy):
------------------------	--------------------

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator:	Date (mm/dd/yyyy):
Last Name (Family Name) First Name (Given Name)	
Address (Street Number and Name) City or Town State Zip Code	

DHS Ended Covid-19 Flexibility Rules

DHS adopted the temporary policy in response to the difficulties many individuals experienced with renewing documents during the COVID-19 pandemic. Now that document-issuing authorities have reopened and/or provided alternatives to in-person renewals, DHS ended this flexibility on May 1, 2022 and employers must only accept **unexpired** List B documents.

If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, employers are required to **update their Forms I-9 by July 31, 2022.**

Form I-9: Section 2

Section 2. Employer or Authorized Representative Review and Verification			
(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)			
Employee Last Name, First Name and Middle Initial from Section 1: _____			
List A Identity and Employment Authorization	OR	List B Identity	AND List C Employment Authorization
Document Title: _____		Document Title: _____	Document Title: _____
Issuing Authority: _____		Issuing Authority: _____	Issuing Authority: _____
Document Number: _____		Document Number: _____	Document Number: _____
Expiration Date (if any)(mm/dd/yyyy): _____		Expiration Date (if any)(mm/dd/yyyy): _____	Expiration Date (if any)(mm/dd/yyyy): _____
Document Title: _____		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> 3-D Barcode Do Not Write in This Space </div>	
Issuing Authority: _____			
Document Number: _____			
Expiration Date (if any)(mm/dd/yyyy): _____			
Document Title: _____			
Issuing Authority: _____			
Document Number: _____			
Expiration Date (if any)(mm/dd/yyyy): _____			
Certification			
I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.			
The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)			
Signature of Employer or Authorized Representative _____		Date (mm/dd/yyyy) _____	Title of Employer or Authorized Representative _____
Last Name (Family Name) _____		First Name (Given Name) _____	Employer's Business or Organization Name _____
Employer's Business or Organization Address (Street Number and Name) _____		City or Town _____	State _____ Zip Code _____
Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)			
A. New Hire (if applicable) Last Name (Family Name) _____		First Name (Given Name) _____	Middle Initial _____
B. Date of Rehire (if applicable) (mm/dd/yyyy) _____			
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.			
Document Title: _____	Document Number: _____	Expiration Date (if any)(mm/dd/yyyy) _____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.			
Signature of Employer or Authorized Representative _____		Date (mm/dd/yyyy) _____	Print Name of Employer or Authorized Representative: _____

Section 1: Employee Information and Verification

Section 1. Employee Information and Attestation <i>(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)</i>						
Last Name (<i>Family Name</i>)		First Name (<i>Given Name</i>)		Middle Initial	Other Names Used (<i>if any</i>)	
Address (<i>Street Number and Name</i>)		Apt. Number	City or Town		State	Zip Code
Date of Birth (<i>mm/dd/yyyy</i>)	U.S. Social Security Number	E-mail Address			Telephone Number	
	[][]-[][]-[][][][]					

- To be completed by **EMPLOYEE.**
- Employer **MUST** verify Section 1 is **COMPLETE.**

Section 1: Important Area – Employee Attestation

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number **OR** Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

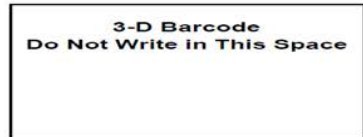
2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)



Signature of Employee: _____

Date (mm/dd/yyyy): _____

- The EMPLOYEE **MUST** select one of the four categories and **sign and date** Section 1 of Form I-9.
- All employees must complete Section 1 no later than the **first business day** of employment for pay.

Section 2: Employer Certification of Document Review

Section 2. Employer or Authorized Representative Review and Verification
(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1:

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title:		Document Title:		Document Title:
Issuing Authority:		Issuing Authority:		Issuing Authority:
Document Number:		Document Number:		Document Number:
Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):
Document Title:		<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> 3-D Barcode Do Not Write in This Space </div>		
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)

Signature of Employer or Authorized Representative	Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name (Family Name)	First Name (Given Name)	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)		City or Town	State Zip Code

Lists of Acceptable Documents

Lists of Acceptable Documents

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be **UNEXPIRED**

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card	OR	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	AND	1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport, and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. Native American tribal document
		6. Military dependent's ID card		6. U.S. Citizen ID Card (Form I-197)
	7. U.S. Coast Guard Merchant Mariner Card	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)		
	8. Native American tribal document	8. Employment authorization document issued by the Department of Homeland Security		
	9. Driver's license issued by a Canadian government authority			
	For persons under age 18 who are unable to present a document listed above:			
	10. School record or report card			
	11. Clinic, doctor, or hospital record			
	12. Day-care or nursery school record			
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Section 2: Employer Certification of Document Review

- Completed by EMPLOYER.
- MUST be completed no later than **3 business days** after the employee begins work for pay.
- EMPLOYER MUST examine **original documents**.
- Documents MUST be **UNEXPIRED**.

Section 2: Documents – Genuineness and Photocopies

- You are not required to be a document expert.
- You **MUST** accept a document presented by an employee if it reasonably appears to be:
 - Genuine AND
 - Relates to the individual presenting it
- The document **MUST** be original* – photocopies are **NOT** acceptable.

**The only exception is a certified copy of a birth certificate.*

Section 2: Receipt Rule

- A receipt indicating that an individual has applied for an *initial* employment authorization document (Form I-766) or for a *renewal* of an expiring employment authorization document (Form I-766) is **NOT** acceptable for Form I-9.
- Receipts are never acceptable if employment will last less than 3 business days.

Section 3: Reverification

Section 3. Reverification and Rehires <i>(To be completed and signed by employer or authorized representative.)</i>		
A. New Name <i>(if applicable)</i> Last Name <i>(Family Name)</i> First Name <i>(Given Name)</i> Middle Initial		B. Date of Rehire <i>(if applicable)</i> <i>(mm/dd/yyyy)</i> :
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.		
Document Title:	Document Number:	Expiration Date <i>(if any)</i> <i>(mm/dd/yyyy)</i> :
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative:	Date <i>(mm/dd/yyyy)</i> :	Print Name of Employer or Authorized Representative:

- You **MUST** reverify an employee on Section 3 on a new Form I-9 if his or her temporary employment authorization has expired.
- Rehire the **EMPLOYEE** within 3 years of original hire date
- Update the biographic information of an employee

Correcting Mistakes

If you discover a mistake on Form I-9:

- Correct the existing form OR prepare a new Form I-9.
- If you choose to correct the existing Form I-9, line out the incorrect portions, enter the correct information, and initial and date the correction.
- If you do a new Form I-9, retain the old form. You should also attach a short memo to both the new and old Forms I-9 stating the reason for your action.

Retention

Forms I-9 must be stored for:

- **3 years after** the date you **hire** an employee *or*
- **1 year after** the date employment **terminates**, *whichever is later*.

Example:

- John Smith was hired on November 1, 1993, and on July 5, 1994, employment was terminated.
- November 1, 1993 + 3 years = November 1, 1996
July 5, 1994 + 1 year = July 5, 1995
- The retention date is November 1, 1996

Defending the Government Investigation

Practical Guidance Concerning Employment-Related Worksite Enforcement



Form I-9 Inspections are Inevitable.

Officials from the Dept. of Homeland Security, the U.S. Dept. of Labor, as well as the U.S. Dept. of Justice may inspect an employer's Form I-9, Employment Eligibility Verification.

Employers generally receive a written Notice of Inspection at least 3 days before the inspection.

When officials arrive to inspect an employer's Form I-9, the employer must:

- Retrieve and reproduce electronically stored Form I-9 and any other documents the officer requests;
- Provide the officer with the necessary hardware and software to inspect electronic documents; and
- Provide the officer with any existing electronic summary of the information recorded on the employer's Form I-9.

Form I-9 Inspection Process

<https://www.ice.gov/sites/default/files/documents/inspection-process.pdf>

Know Your Rights: If ICE Comes to Your Work Place (Employee)

All people living in the United States, including undocumented immigrants, have certain U.S. Constitutional rights. If immigration officers (ICE) come to your work place, they must have a valid search warrant or the consent of your employer to enter non-public areas. If you are undocumented and immigration officers come to your work place, be aware of the following:

- **Do not panic and do not run away.** If you are frightened and feel like you need to leave, you can calmly walk toward the exit.
 - If you are stopped, you may ask if you are free to leave. If the officer says no, do not try to exit the building.
 - If you are questioned, you may tell them you want to remain silent.
- **You have the right to remain silent.** You do not need to speak to the immigration authorities or answer any questions.
 - If you are asked where you were born, or how you entered the United States, you may refuse to answer or remain silent.
 - If you choose to remain silent, say so out loud.
 - If they ask you to stand in a group according to immigration status, you do not have to move, or you can move to an area that is not designated for a particular group.
 - You may show a [know-your-rights card](#) to an officer that explains that you will remain silent and wish to speak to a lawyer.
- You may refuse to show identity documents that say what country you are from.
- Do not show any false documents and do not lie.
- **You have the right to speak to a lawyer.** If you are detained or taken into custody, you have the right to immediately contact a lawyer.
 - Even if you do not have a lawyer, you may tell the immigration officers that you want to speak to one.
 - If you have a lawyer, you have the right to talk to them. If you have a signed [Form G-28](#), which shows you have a lawyer, give it to an officer.
 - If you do not have a lawyer, ask an immigration officer for a list of pro bono lawyers.
 - You also have the right to contact your consulate. The consulate may be able to assist you in locating a lawyer.
 - You can refuse to sign any/all paperwork until you have had the opportunity to speak to a lawyer.
 - If you choose to sign something without speaking to a lawyer, be sure you understand exactly what the document says and means before you sign it.

If you want more information about your rights or to learn if you might be eligible for immigration benefits or relief, speak to a reputable immigration lawyer. Go to www.ailalawyer.org to connect with a lawyer in your area.

Know Your Rights: If ICE Comes to Your Work Place (Public)

All people living in the United States, including undocumented immigrants, have certain U.S. Constitutional rights. If you are undocumented and immigration (ICE) officers stop you on the street or in a public place, know you have the following rights:

- **You have the right to remain silent.** You do not need to speak to the immigration officers or answer any questions.
 - You may ask if you are free to leave. If the officer says no, you may exercise your right to remain silent.
 - If you are asked where you were born or how you entered the United States, you may refuse to answer or remain silent.
 - If you choose to remain silent, say so out loud.
 - You may show a [know-your-rights card](#) to the officer that explains that you will remain silent and wish to speak to an attorney.
 - You may refuse to show identity documents that say what country you are from.
 - Do not show any false documents and do not lie.
- **You may refuse a search.** If you are stopped for questioning but are not arrested, you do not have to consent to a search of yourself or your belongings, but an officer may “pat down” your clothes if he or she suspects you have a weapon.
- **You have the right to speak to a lawyer.** If you are detained or taken into custody, you have the right to immediately contact a lawyer.
 - Even if you do not have a lawyer, you may tell the immigration officers that you want to speak to a lawyer.
 - If you have a lawyer, you have the right to talk to them. If you have a signed DHS [Form G-28](#), which shows you have a lawyer, give it to an officer.
 - If you do not have a lawyer, ask an immigration officer for a list of pro bono lawyers.
 - You also have the right to contact your consulate. The consulate may be able to assist you in locating a lawyer.
 - You can refuse to sign any/all paperwork until you have had the opportunity to speak to a lawyer.
 - If you choose to sign something without speaking to a lawyer, be sure you understand exactly what the document says and means before you sign it.

If you want more information about your rights or to learn if you might be eligible for immigration benefits or relief, speak to a reputable immigration lawyer. Go to www.ailalawyer.org to connect with a lawyer in your area.

The Anatomy of a Criminal Investigation

Search/seizure

- Response team
- Knowing the nature of the investigation
- Who is the employer
 - Conflicts
 - Resource counsel
- What are your rights
 - Subpoena
 - Move to quash/limit
 - Access to premises
 - Right to remain silent
 - Right to refuse to assist
 - Right to ask questions

**YOU HAVE
THE RIGHT
TO REMAIN
SILENT.**

Maximize your
potential!

Understanding the Important Role that H-1B Workers Play in Our Economy

Foreign workers fill a critical need in the U.S. labor market, particularly in the Science, Technology, Engineering, and Math (STEM) fields. Skilled immigrants' contributions to the U.S. economy help create new jobs and new opportunities for economic expansion and are in the national interest. For example, eight companies involved in the development of the coronavirus vaccine received approvals for biochemists, biophysicists, chemists, and other scientists through the H-1B program.

Do you know what the H-1B Visa Program is?

The H-1B visa program allows U.S. employers to temporarily hire foreign workers to deal with labor shortages in rapidly growing fields that demand specialized skills, such as research, engineering and computer programming. H-1B beneficiaries typically perform services in a specialty occupation, cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling.

H-1B Electronic Registration Process

Employers who seek authorization to employ H-1B workers must complete an electronic registration process that requires basic information about the employer and visa beneficiary. USCIS likely will open H-1B registration for several weeks in March of 2021. The H-1B selection process would then be based on those properly submitted electronic registrations. Only employers with selected registrations will be eligible to file H-1B cap-subject petitions.

Ever wonder which jobs qualify for H-1B visas?

H-1B visas apply to **specialty occupations**. This normally means **professional jobs** that require:

1. A bachelor's degree or higher in a specific field;
2. A theoretical and practical application of a body of highly specialized knowledge; and
3. An employer requirement of bachelor's degree as minimum requirement for the job.

H-1B visas can be used to hire the following professionals:

- Engineers
- Accountants
- Lawyers
- Scientists
- Librarians
- Psychologists
- Financial analysts
- Systems analysts/engineers
- Architects
- Teachers/professors
- Journalists/editors
- STEM professionals
- Doctors
- Physical therapists

Special considerations when hiring computer programmers in H-1B status:

- Certain computer programmers can qualify for H-1B visas based on the type of skill involved in the particular programming position. Programmers dealing with scientific or engineering applications are more likely to be qualified for H-1B visas. For example, entry level programmers, who only require an associate's degree, will not generally qualify for H-1B status.

Special considerations when hiring certain health care workers in H-1B status:

The H-1B visa program can be used to hire nurses, therapists, speech pathologists and audiologists, medical technologists, physician assistants and medical technicians. In these cases, certification is required that verifies the candidates education and training, English proficiency and licensure.

Before extending an employment offer to an H-1B candidate, employers should consider the following:

- Does the H-1B candidate have a bachelor's degree?
- If not, does the H-1B candidate have sufficient experience to equal a bachelor's degree?
- Does the H-1B candidate have all qualifications specified in the company's job description?
- Is the company's job description consistent with normal industry standards?

Employers who sponsor H-1B visa petitions have easy notice duties

- The employer must file a Labor Condition Application (LCA) with the Department of Labor.
- The employer must post the Labor Condition Application for ten business days.

Employers who sponsor H-1B visa petitions have easy record keeping duties

- Employers must prepare a Public Access File that contains information about the H-1B job opportunity.
- Employers must keep the Public Access File for 1 year.
- Employers must make the Public Access File available for inspection upon request.

Employers who sponsor H-1B visa petitions have limited ongoing obligations

First, employers must pay the H-1B worker the required wage rate throughout the approved employment period.

Second, the employer must notify the U.S. Department of labor if a strike or lockout occurs with respect to any H-1B occupation.

Third, the employer must post notice when an H-1B worker travels to locations away from the work site listed in any Labor Condition Application.

Fourth, employers have an ongoing obligation to monitor whether they are H-1B dependent.

Everything has its limits.

H-1B visas are subject to annual numerical limits (cap) of 65,000 each year. An additional 20,000 H-1B visas are available to beneficiaries with a master's degree or higher from a U.S. institution of higher education. But H-1B workers who are sponsored by or employed at an institution of higher education or its affiliated or related nonprofit entities, a nonprofit research organization or a government research organization are not subject to numerical limitations.

H-1B Period of Stay

An H-1B employee may be admitted to the United States for an initial period of up to three years. The visa may be extended, but generally cannot go beyond a total of six years. H-1B employees who timely file green card applications may renew their H-1B visa indefinitely while awaiting green card issuance.

Offering benefits to H-1B employees

Employers must offer the same benefits package on the same basis to U.S. workers and H-1B workers. Eligibility and participation criteria must be the same for all workers. In addition, H-1B workers cannot be denied benefits because they are temporary employees.

H-1B visa holders are permitted to travel internationally and may re-enter the U.S. with a valid H-1B visa. Foreign nationals who want to travel now should be aware of the various COVID-19 guidelines that apply to international travel. Likewise, employers who assign employees to international work should prepare for delayed re-entry to the U.S. due to COVID-19 protocols.

Family of H-1B Visa Holders

An H-1B visa holder's spouse and unmarried children under 21 may enter the U.S. in H-4 status. But only certain H-4 dependent spouses of H-1B nonimmigrants can apply for employment authorization.